



Town of Dumfries  
Council Meeting

Meeting Date:

February 18, 2014

Agenda Item#

VIII-D

AGENDA ITEM FORM

**TYPE OF AGENDA ITEM:**

- ☐ CONSENT AGENDA  
☐ PRESENTATION  
☐ ACTION ITEM  
☐ TOWN MANAGER & STAFF COMMENTS  
☐ PUBLIC HEARING  
☐ Duly Advertised

**PURPOSE OF ITEM:**

- ☐ INFORMATION ONLY  
☐ DISCUSSION ONLY  
☒ DISCUSSION AND/OR DECISION  
☐ Introduction ☐ Resolution  
☐ Ordinance ☐ Grant/MOU  
☒ By Motion ☐ Bylaws  
☐ Certificate

**PRESENTER:** Richard West

**PRESENTER TITLE:** Director of Public Works

**AGENDA ITEM:**

Memorandum of Agreement (MOA) between the Northern Virginia Transportation Authority (NVTA), Prince William County (PWC) and the Town of Dumfries regarding distribution and use of 30 percent funds under Chapter 766 of the 2013 Virginia Acts of Assembly

**BACKGROUND / SUMMARY:**

The NVTA has developed MOAs for distribution and use of 30 percent funds under Chapter 766 of the 2013 Virginia Act of Assembly (HB2313). The first 30 percent of funds that NVTA receives will be distributed to the Counties and Cities of NVTA. Counties will then distribute to their respective qualifying Towns the Town portions of the 30 percent funds.

NVTA has developed one "standard" MOA for all Counties and Cities to execute with the NVTA, and one "standard" MOA for NVTA and Counties with Towns that will receive funds.

**ATTACHMENTS:**

Resolution

MOA with NVTA and County (adopted 1-21-14)

MOA with NVTA, County, and Town

**REQUESTED ACTION:**

☐ NO ACTION REQUESTED

Move to the consent agenda for the 04 March 2014 Council Meeting, authorizing the Town Manager to enter into the agreement with PWC and the NVTA.

**FOR MORE INFORMATION, CONTACT:**

Phone#: 703 221-3400

Name:

Richard West

E-mail:

rwest@dumfriesva.gov

**FOR USE DURING MEETING**

Y N

☐ ☐ Brewer  
☐ ☐ Reynolds  
☐ ☐ Wood

Y N

☐ ☐ Foreman  
☐ ☐ Toney

**VOTE:**

☐ PASSED

☐ NOT PASSED

Y N

☐ ☐ Forrester  
☐ ☐ Washington

**AT A REGULAR MEETING OF THE DUMFRIES TOWN COUNCIL, HELD ON MARCH 4, 2014, IN COUNCIL CHAMBERS, 17755 MAIN STREET, DUMFRIES, VIRGINIA: ON A MOTION MADE BY \_\_\_\_\_, AND SECONDED BY \_\_\_\_\_, THE FOLLOWING RESOLUTION WAS ADOPTED BY THE FOLLOWING VOTE:**

Charles C. Brewer, ;  
Gerald M. Foreman, II, ;  
Kristin W. Forrester, ;  
Helen D. Reynolds, ;  
Willie J. Toney, ;  
Gwen P. Washington, ;  
Derrick R. Wood, ;

**RESOLUTION TO AUTHORIZE THE TOWN MANAGER TO ENTER INTO A MEMORANDUM OF AGREEMENT BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY (“NVTA”), COUNTY OF PRINCE WILLIAM AND THE TOWN OF DUMFRIES REGARDING DISTRIBUTION AND USE OF 30% FUNDS UNDER CHAPTER 766 OF THE 2013 VIRGINIA ACTS OF ASSEMBLY**

**WHEREAS**, NVTA was established by the Northern Virginia Transportation Authority Act, Va. Code Ann. §§ 15.2- 4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park (collectively and individually “City/County”); and

**WHEREAS**, in accordance with Va. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the “Fund”), the proceeds of which fund are distributed to NVTA for use in accordance with Va. Code Ann. § 15.2-4838.1; and

**WHEREAS**, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a pro rata basis to each City/County with each City/County’s share being the total of the revenues received by NVTA that are generated by or attributable to such City/County divided by the total of such revenue received by NVTA (the “30% Funds”); and

**WHEREAS**, among the other requirements of Va. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTA in a separate, special fund (“The Local Fund”) to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTA’s most recent long range transportation plan, or for public transportation purposes; and

**WHEREAS**, § 15.2-4838.1 further requires each City/County to provide annually to NVTa sufficient documentation as required by NVTa showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1B.1; and

**WHEREAS**, § 15.2-4835 provides that the administrative expenses of NVTa, as set forth in NVTa's annual budget, shall be allocated among the component counties and cities based on relative population which administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; and

**WHEREAS**, pursuant to Chapter 766, the legislation establishing the Fund, imposes, among other requirements, the following requirements on each City/County: (1) that each City/County deposit into its Local Fund all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTa equivalent to the amount that would have been received had the maximum tax rate been imposed; and (2) that each City/County expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the City/County between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and

**WHEREAS**, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its Local Fund the amount equivalent to the revenue that would be generated by imposition of the maximum tax rate allowed under § 58.1-3221.3, then NVTa shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's Local Fund and the amount that should have been deposited; and

**WHEREAS**, Enactment Clause 8 of Chapter 766 provides that NVTa and each City/County embraced by it shall work cooperatively with towns with a population greater than 3,500 located within NVTa's member Counties ("Qualifying Towns") for purposes of implementing Chapter 766 and so as to ensure that all such "Qualifying Towns" receive their respective share(s) of the revenues pursuant to subdivision B 1 of § 15.2-4838.1; and

**WHEREAS**, Chapter 766 further provides that in the event any County appropriates or allocates any of the 30% Funds to a non-transportation purpose, that County and its Qualifying Towns shall not be the direct beneficiary or beneficiaries of any of the revenues from the NVTa Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

**WHEREAS**, Chapter 766 further provides that, in the event that any Qualifying Town appropriates or allocates any of the 30% Funds to a non-transportation purpose, not only will such Qualifying Town not be a direct beneficiary of any of the revenues in the fiscal year immediately succeeding the fiscal year in which the 30% revenues were appropriated or allocated to a non-transportation purpose, but its

constituent County and all other Qualifying Towns within said County could also be judicially declared not to be direct beneficiaries of such revenues from NVTa in the next succeeding fiscal year; and

**WHEREAS**, NVTa has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each NVTa member City/County and each Qualifying Town adhere to the statutory and other legal obligations that it has with regard to the Fund; and

**WHEREAS**, NVTa has requested that each member City/County enter into a separate Memorandum of Agreement in order to implement the provisions of Chapter 766 with regard to *inter alia* the distribution and use of funds in the manner prescribed by Va. Code Ann. §15.2-4838.1 and each member City/County has agreed; and

**WHEREAS** NVTa and each member City/County has agreed to be bound by all terms and conditions in a separate Memorandum of Agreement ("NVTa/City-County MOA"), for purposes of ensuring that NVTa, each member City/County, and each Qualifying Town are in full compliance with Chapter 766 and all applicable requirements of the NVTa Act with regard to the receipt, maintenance, management, oversight, distribution, and use of all funds from the NVTa Fund.

**NOW, THEREFORE, BE IT RESOLVED** by Town Council that the Town Manager be authorized to enter into a Memorandum of Agreement between the Northern Virginia Transportation Authority, the County of Prince William and the Town of Dumfries.

By Order of Council:

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Gerald M. Foreman, Mayor

ATTEST:

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Dawn Hobgood, Town Clerk



**MOTION: CADDIGAN**

**January 21, 2014  
Regular Meeting  
Res. No. 14-67**

**SECOND: NOHE**

**RE: AUTHORIZE THE COUNTY EXECUTIVE TO SIGN THE  
MEMORANDUM OF AGREEMENTS BETWEEN THE NORTHERN  
VIRGINIA TRANSPORTATION AUTHORITY AND PRINCE  
WILLIAM COUNTY AND PRINCE WILLIAM COUNTY AND THE  
QUALIFYING TOWN FOR THE RECEIPT OF LOCAL 30% HB2313  
REVENUES**

**ACTION: APPROVED**

**WHEREAS**, in April 2013, the General Assembly and Governor approved a new transportation funding bill (HB2313) with all taxes and fees imposed by the General Assembly; and

**WHEREAS**, seventy percent (70%) of HB2313 revenues will be provided to the Northern Virginia Transportation Authority (NVTa) for regional projects included in TransAction 2040 or future updates that have also been evaluated by VDOT for reducing congestion, or mass transit capital projects that increase capacity; and

**WHEREAS**, the Northern Virginia regional component imposes an increase of 0.7% sales tax, to a total of 6% for Northern Virginia; imposes a 2% Transient Occupancy Tax and imposes a regional congestion fee (grantors tax) of \$0.15 per \$100 valuation; and

**WHEREAS**, thirty percent (30%) of HB2313 revenues will be distributed to localities, by the NVTa, to spend on urban or secondary road construction, capital improvements that reduce congestion, projects included in TransAction 2040 or its future updates, or for public transportation purposes; and

**WHEREAS**, the NVTa is preparing to distribute local (30%) funding to member jurisdictions, which is estimated to be approximately \$10 million for Prince William County; and

**WHEREAS**, Enactment Clause 8 of HB2313 provides that NVTa and each City/County embraced by it shall work cooperatively with towns with a population greater than 3,500 located within NVTa's member Counties ("Qualifying Towns") for purposes of implementing HB2313 and so as to ensure that all such "Qualifying Towns" receive their respective share(s) of the revenues pursuant to subdivision B 1 of Section 15.2-4838.1; and

**WHEREAS**, the only qualifying Town in Prince William County is the Town of Dumfries; and

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**WHEREAS**, the NVTa Financial Working Group in consultation with the Council of Counsel has drafted Memorandum of Agreements (MOAs) between NVTa and the Counties and Cities, and an MOA between the Counties and the Qualifying Towns; and

**WHEREAS**, the County Attorney assisted in the development and has approved the MOAs; and

**WHEREAS**, the NVTa approved the MOAs at its December 12, 2013, meeting; and

**WHEREAS**, the MOA between the NVTa and the County, and the County and the Qualifying Town requires the signature of the Chief Executive Officer of each locality and the signing of the MOA is required before HB2313 funds will be disbursed to NVTa member jurisdictions;

**NOW, THEREFORE, BE IT RESOLVED** that the Prince William Board of County Supervisors does hereby authorize the County Executive to sign the Memorandum of Agreements between the Northern Virginia Transportation Authority and Prince William County, and Prince William County and the Qualifying Town for the receipt of local 30% HB2313 Revenues.

ATTACHMENTS: MOA between the NVTa and County and Qualifying Town

MOA between the County and Qualifying Town

**Votes:**

**Ayes:** Caddigan, Candland, Covington, Jenkins, May, Nohe, Principi, Stewart

**Nays:** None

**Absent from Vote:** None

**Absent from Meeting:** None

**For Information:**

County Attorney

Transportation Director

ATTEST: \_\_\_\_\_

  
for Clerk to the Board

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY  
("NVTa"), COUNTY OF PRINCE WILLIAM AND THE TOWN OF DUMFRIES  
REGARDING DISTRIBUTION AND USE OF 30% FUNDS UNDER CHAPTER  
766 OF THE 2013 VIRGINIA ACTS OF ASSEMBLY**

THIS MEMORANDUM OF AGREEMENT, effective this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Agreement"), by and between NVTa, County of Prince William, a member of ("NVTa") and the Town of Dumfries, a Qualifying Town under the NVTa Act and under Enactment Clause 8 of Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766").

**WITNESSETH:**

WHEREAS, NVTa was established by the Northern Virginia Transportation Authority Act, Va. Code Ann. §§ 15.2- 4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park (collectively and individually "City/County"); and

WHEREAS, in accordance with Va. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which fund are distributed to NVTa for use in accordance with Va. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTa shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTa that are generated by or attributable to such City/County divided by the total of such revenue received by NVTa (the "30% Funds"); and

WHEREAS, among the other requirements of Va. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTa in a separate, special fund ("The Local Fund") to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTa's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTa sufficient documentation as required by NVTa showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1B.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTa, as set forth in NVTa's annual budget, shall be allocated among the component counties and cities based on relative population which-administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; and

WHEREAS, pursuant to Chapter 766, the legislation establishing the Fund, imposes, among other requirements, the following requirements on each City/County: (1) that each City/County deposit into its, Local Fund all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed

under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTa equivalent to the amount that would have been received had the maximum tax rate been imposed; and (2) that each City/County expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the City/County between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its Local Fund the amount equivalent to the revenue that would be generated by imposition of the maximum tax rate allowed under § 58.1-3221.3, then NVTa shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's Local Fund and the amount that should have been deposited;

WHEREAS, Enactment Clause 8 of Chapter 766 provides that NVTa and each City/County embraced by it shall work cooperatively with towns with a population greater than 3,500 located within NVTa's member Counties ("Qualifying Towns") for purposes of implementing Chapter 766 and so as to ensure that all such "Qualifying Towns" receive their respective share(s) of the revenues pursuant to subdivision B 1 of § 15.2-4838.1.

WHEREAS Chapter 766 further provides that in the event any County appropriates or allocates any of the 30% Funds to a non-transportation purpose, that County and its Qualifying Towns shall not be the direct beneficiary or beneficiaries of any of the revenues from the NVTa Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS Chapter 766 further provides that, in the event that any Qualifying Town appropriates or allocates any of the 30% Funds to a non-transportation purpose, not only will such Qualifying Town not be a direct beneficiary of any of the revenues in the fiscal year immediately succeeding the fiscal year in which the 30% revenues were appropriated or allocated to a non-transportation purpose, but its constituent County and all other Qualifying Towns within said County could also be judicially declared not to be direct beneficiaries of such revenues from NVTa in the next succeeding fiscal year.

WHEREAS, NVTa has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each NVTa member City/County and each Qualifying Town adhere to the statutory and other legal obligations that it has with regard to the Fund;

WHEREAS, NVTa has requested that each member City/County enter into a separate Memorandum of Agreement in order to implement the provisions of Chapter 766 with regard to *inter alia* the distribution and use of funds in the manner prescribed by Va. Code Ann. §15.2-4838.1 and each member City/County has agreed;

WHEREAS NVTa and each member City/County has agreed to be bound by all terms and conditions in a separate Memorandum of Agreement ("NVTa/City-County MOA"), for purposes of ensuring that NVTa, each member City/County, and each Qualifying Town are in full compliance with Chapter 766 and all applicable requirements of the NVTa Act with regard to the receipt, maintenance, management, oversight, distribution, and use of all funds from the NVTa Fund;

NOW, THEREFORE, in consideration of the foregoing which is hereby incorporated within this "Agreement" and the mutual undertakings of the parties, the County of Prince William and the Qualifying Town of Dumfries agree as follows:

1. NVTAs Management of NVTAs Funds. NVTAs will manage the NVTAs Fund and all funds therein and shall receive from the Commonwealth's Comptroller regular distributions of the sums deposited in the special non-reverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTAs shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTAs investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTAs shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its financial records. NVTAs, each component City/County, and each Qualifying Town shall use the funds solely for transportation purposes benefiting those Counties, Cities and Qualifying Towns that are embraced by NVTAs in accordance with § 15.2-4838.1.

2. NVTAs Distributions of 30% Funds to Each NVTAs Member City/County, including Qualifying Town Shares. NVTAs will make regular distributions of the 30% Funds to each member City/County in accordance with applicable law and in accordance with the processes established by the "NVTAs/City-County MOA" incorporated by reference as Attachment 1.

A. Beginning no later than the month following final approval and execution of this Agreement by the parties, NVTAs shall begin to distribute to County of Prince William the 30% Funds to which County of Prince William is entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTAs; and, subject to NVTAs continued receipt of funds from the Comptroller, shall continue to distribute to County of Prince William its respective 30% funds on a monthly basis; provided that County of Prince William remains in compliance with the terms of NVTAs/City-County MOA and all applicable provisions of law.

B. Upon receipt of its 30% funds as set forth in Paragraph 2A above, County of Prince William will calculate and transfer to the separate account on its financial records that has been established in the name of Town of Dumfries in accordance with Paragraphs 4 and 7A of this Agreement, all amounts attributable to Town of Dumfries using the bases prescribed by Chapter 766 and Paragraph 7A of this Agreement in the manner set forth in Paragraph 4 of this Agreement.

C. County of Prince William will advise Town of Dumfries on a quarterly basis or at such other intervals that are mutually agreeable to County of Prince William and Town of Dumfries as to the balance in Town of Dumfries' special account.

D. For Town of Dumfries' planning and budgeting purposes, prior to the beginning of each fiscal year, County of Prince William will provide to Town of Dumfries a revenue report of receipts for the previous twelve (12) months actual funds transfers from County of Prince William to Town of Dumfries.

3. County of Prince William and Town of Dumfries' Obligation to Pay Shares of NVTAs Administrative Expenses. Pursuant to § 15.2-4835, County of Prince William is responsible for paying its share of NVTAs total administrative expenses as set forth in NVTAs approved budget prior to the start of NVTAs fiscal year which begins July 1<sup>st</sup> of each year. NVTAs shall invoice County of Prince William for its proportionate share of NVTAs administrative expenses by June 1<sup>st</sup> of the preceding fiscal year, and County of Prince William shall, at its election, have the option of paying in either of the following methods: (1) by having NVTAs reduce the final distribution of County of Prince William's 30% funds made to County of Prince William after July 1<sup>st</sup> by the amount of



County of Prince William's share of the administrative expenses; or 2) by paying NVTa directly for its share of the administrative expenses not later than July 15<sup>th</sup>. County of Prince William's failure to elect one of the foregoing methods of payment on or before July 1<sup>st</sup> of the preceding year shall result in NVTa reducing the first distribution of 30% Funds made to County of Prince William after July 15<sup>th</sup> by the amount of County of Prince William's share of NVTa's administrative expenses. In the event that County of Prince William fails to pay its share of NVTa's administrative expenses by July 15<sup>th</sup>, NVTa shall withhold further distribution of all County of Prince William's Funds from the NVTa Fund. NVTa will reduce County of Prince William's 30% funds by the amount of County of Prince William's delinquent share of NVTa's administrative expenses, remit the balance of County of Prince William's 30% funds to County of Prince William, and restore distribution of all County of Prince William's other NVTa funding.

A. County of Prince William's payment of its full amount of NVTa's administrative expenses must include the portion of such administrative expenses that are attributable to Town of Dumfries, and County of Prince William will seek reimbursement from Town of Dumfries regarding Town of Dumfries' *pro rata* share of all NVTa's administrative fees that were pre-paid by County of Prince William. Town of Dumfries' share of NVTa's annual administrative expenses shall be calculated by the relative population method as prescribed by Va. Code Ann. § 15.2-4835. Once County of Prince William pays the full amount of its NVTa administrative expenses in the time and manner required by the NVTa/City –County MOA, County of Prince William will thereafter send an invoice to Town of Dumfries seeking reimbursement for Town of Dumfries' portions of NVTa's administrative expenses pre-paid by County of Prince William. Town of Dumfries will pay said invoice within thirty (30) days upon receipt. If mutually agreed upon by County of Prince William and Town of Dumfries, Town of Dumfries' reimbursement payments may be made via electronic transfer of funds or as a direct deduction from Town of Dumfries' separate account with County of Prince William; and Town of Dumfries shall have the same options regarding method of payment to County of Prince William as identified in Paragraph 3 above. Failure by Town of Dumfries to pay said invoice will result in County of Prince William withholding Town of Dumfries' 30% Funds until payment is made.

4. Establishment and Maintenance of Separate Accounts by County of Prince William and Town of Dumfries.

A. County of Prince William is required to deposit in its Local Fund all revenues distributed to it by NVTa pursuant to Paragraph 2 above and all revenues collected by County of Prince William from the tax imposed pursuant to § 58.1-3221.3. If County of Prince William has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then County of Prince William is required to deposit into its Local Fund an amount, from sources other than moneys received from NVTa, that is equivalent to the difference between the revenue County of Prince William received from the aforesaid tax and the revenue County of Prince William would have received if it had imposed the aforesaid tax at the maximum permissible rate.

B. County of Prince William agrees to establish, segregate, and maintain on its financial records a separate account in the name of Town of Dumfries for the purpose of calculating and distributing those revenues that are generated by and attributable to Town of Dumfries under Chapter 766. Interest on this account shall accrue at the same rate accrued on all other County of Prince William's special transportation accounts.

C. Town of Dumfries agrees to establish, segregate, and maintain on its financial records a separate account for all NVTAs funds that it receives from County of Prince William.

D. Because County of Prince William is required to certify to NVTAs by August 1<sup>st</sup> of each year that County of Prince William has satisfied each of the requirements of Paragraphs 4A and 4B above, on or before July 20th of each year, the chief administrative officer of Town of Dumfries shall certify to County of Prince William, in a format prescribed by and acceptable to County of Prince William and NVTAs, that Town of Dumfries has satisfied each of the requirements set forth in this Paragraph that may be applicable to Town of Dumfries.

E. If County of Prince William has not deposited into its Local Fund an amount equivalent to the revenue County of Prince William would have received if it imposed the tax at the maximum permissible rate under § 58.1-3221.3, then, in any given year, NVTAs shall reduce the 30% Funds distributed to County of Prince William by the difference between the amount the County of Prince William would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its Local Fund; and NVTAs shall retain the amount by which the distribution of County of Prince William's 30% Funds will be reduced for use by NVTAs in accordance with § 15.2-4838.1C.1. In such situation, Town of Dumfries' percentage of County of Prince William's share of its 30% NVTAs revenues shall also be reduced *pro rata*.

5. Maintenance of Transportation Funding by County of Prince William.

A. County of Prince William is required to expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the County of Prince William, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that County of Prince William does not expend or disburse the aforesaid amount in any year, County of Prince William shall not be the direct beneficiary of any NVTAs Funds in the immediately succeeding year. In such event, NVTAs shall make no distribution to County of Prince William of County of Prince William's 30% Funds, or any other monies from the NVTAs Fund to County of Prince William or to any of County of Prince William's Qualifying Towns, including Town of Dumfries; and, in such case, all such funds shall be used in accordance with § 15.2-4838.1C.1.

B. Although County of Prince William and Town of Dumfries understand and acknowledge that Town of Dumfries' receipt of annual funding under Chapter 766 is expressly subject to and contingent upon County of Prince William's annual maintenance of transportation funding efforts and requirements as set forth in Paragraph 5A above, Town of Dumfries shall have no independent requirement under Chapter 766 to maintain its own levels of transportation funding from year to year in order to receive its respective share of the 30% funds.

6. Use of 30% Funds by Town of Dumfries.

A. Town of Dumfries shall use its portion of County of Prince William's 30% Funds as distributed to it by County of Prince William solely for the following purposes in a manner determined by Town of Dumfries: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTAs; or (4) for public transportation purposes.

Town of Dumfries shall not use any of the revenues distributed to it by NVTa to repay debt issued before July 1, 2013.

B. In the event that Town of Dumfries appropriates or allocates any of its portion of County of Prince William's 30% Funds to a purpose other than those specified in paragraph 6A above; and unless Town of Dumfries demonstrates to the satisfaction of County of Prince William and NVTa that such acts were solely a result of and attributable to clerical or other unintentional, inadvertent error, then NVTa and County of Prince William shall cease any further distributions of the 30% Funds to Town of Dumfries in the fiscal year in which the misappropriation or misallocation occurs. Town of Dumfries shall not be the direct beneficiary of any of the funds from the NVTa Fund in the fiscal year immediately succeeding the year in which any of its portion of County of Prince William's 30% Funds were misappropriated or misallocated, and such funds shall be used in accordance with §15.2-4838.1C.1. In the next succeeding fiscal year, NVTa will instruct County of Prince William that there shall be no *pro rata* distribution of County of Prince William's 30% funds to Town of Dumfries; and, if determined by a court of competent jurisdiction, to County of Prince William or any other Qualifying Town located in County of Prince William because Town of Dumfries' default could be deemed a default by County of Prince William and by all other Qualifying Towns located in County of Prince William.

7. County of Prince William's Distributions of Town of Dumfries' Proportionate Share of 30% Funds to Town of Dumfries.

A. Pursuant to Chapter 766, County of Prince William and Town of Dumfries will work cooperatively with NVTa for purposes of implementing the provisions of § 15.2-4838.1 and to ensure that all Qualifying Towns in County of Prince William, including Town of Dumfries, receive their respective share of the 30% Funds distributed by NVTa to County of Prince William. Such share shall be determined on the proportion of population of school age children in Town of Dumfries as compared to County of Prince William for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the tax receipts derived from the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax, and the location of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax.

B. NVTa and County of Prince William have an ongoing responsibility to ensure that all Qualifying Towns in County of Prince William use the 30% Funds in compliance with this Agreement, County of Prince William's NVTa/City-County MOA, and in accordance with law. Town of Dumfries acknowledges that its failure to comply with the terms and conditions of this Agreement shall constitute a default by Town of Dumfries and could constitute a default by County of Prince William and all other Qualifying Towns located in County of Prince William.

C. All distributions of NVTa funds by County of Prince William to Town of Dumfries under this Agreement will be project based and effected by the reimbursement method only. All requests for reimbursements by Town of Dumfries to County of Prince William will be submitted in a form and manner determined by and acceptable to NVTa and County of Prince William. Upon proper submission by Town of Dumfries to County of Prince William; and after review and approval by County of Prince William, County of Prince William shall transmit payment to Town of Dumfries within thirty (30) days from receipt and may be made via electronic transfer of funds, if the two parties so agree. County of Prince William will make every effort to effect

reimbursement to Town of Dumfries within twenty (20) days or sooner, as may be practicable.

D. Without exception, all projects that Town of Dumfries selects and submits for funding reimbursement to County of Prince William must comply with all requirements and conditions for transportation funding as prescribed under Chapter 766. Further, the County of Prince William determination of Town of Dumfries projects is solely determined through Chapter 766 statutory and technical legal review and criteria. Upon joint request of County of Prince William and Town of Dumfries, NVTa will provide its technical resources or act as a non-binding mediator as between County of Prince William and Town of Dumfries in order to assist and/or facilitate in the resolution of any question or dispute as to whether a specific Town of Dumfries transportation project may be eligible for funding under this Agreement or under Chapter 766. All such requests for assistance by NVTa should be submitted, in writing, to NVTa, c/o NVTa's Executive Director. Upon receipt of any such request, NVTa's Executive Director shall advise NVTa regarding the type of assistance requested and will thereafter make NVTa's technical and legal staff available to provide the type of assistance requested by County of Prince William and Town of Dumfries. Nothing herein shall affect any party's rights to seek or pursue any and all remedies at law that may be available to that party to resolve any disputes.

E. If Town of Dumfries fails to comply with the project selection requirements as prescribed by Chapter 766 or fails to comply with the terms and conditions of this Agreement, it will be obligated to refund with interest to County of Prince William all funds used contrary to this Agreement or in derogation of the law.

8. County of Prince William's Obligation to File Annual Report to NVTa and Town of Dumfries' Obligation to File Annual Report to County of Prince William. County of Prince William must annually provide to NVTa an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6; which Annual Report must include sufficient documentation, showing Town of Dumfries' appropriate use of its portion of County of Prince William's 30% funds during the previous fiscal year. Because County of Prince William is required to provide its Report to NVTa on or before August 1<sup>st</sup> of each year, Town of Dumfries shall provide to County of Prince William on or before July 20<sup>th</sup> of each year an unaudited financial report, using the "cash basis method of accounting" with supporting documentation in a form required by NVTa and County of Prince William showing that all funds distributed by County of Prince William to Town of Dumfries during the previous fiscal year were used as required by Paragraph 6 and in full compliance with the law. In the event the Town of Dumfries' audited financials show a material variance, defined as five percent (5%) or more after adjusted for the difference between cash basis accounting and accrual basis accounting, from the initial report, Town of Dumfries shall provide County of Prince William with supplemental documentation satisfactory to County of Prince William, detailing Town of Dumfries' use of the 30% Funds.

A. In the event the Town of Dumfries fails to provide the report or information as required above, County of Prince William shall withhold further distributions of Town of Dumfries' 30% Funds until the report or supplemental information is provided in accordance with this Paragraph. Once Town of Dumfries provides an acceptable report with appropriate documentation, all withheld funds, inclusive of any interest accrued on such withheld funds, shall be made available for distribution to Town of Dumfries as soon as practicable.



9. Failure to Comply with Memorandum of Agreement.

A. In the event County of Prince William fails to perform any of its obligations under this Agreement, Town of Dumfries shall provide written notice to County of Prince William's County Executive of such failure or non-compliance. County of Prince William shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from Town of Dumfries. Upon its receipt and review of the notice of default from Town of Dumfries, County of Prince William may dispute any matters set forth in such notice; and in such circumstances shall advise Town of Dumfries' Town Manager that any such matter is in dispute. In the event County of Prince William fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, if County of Prince William agrees, Town of Dumfries may request the assistance of NVTAs as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County of Prince William or Town of Dumfries from pursuing all legal remedies that may be available to it at law.

B. In the event Town of Dumfries fails to perform any of its obligations under this Agreement, County of Prince William's Executive shall notify the Town Manager of Town of Dumfries and notify NVTAs' Executive Director that Town of Dumfries is in default. If agreed to by County of Prince William, Town of Dumfries may request the assistance of NVTAs as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County of Prince William or Town of Dumfries from pursuing all legal remedies that may be available to it at law.

C. A cure by Town of Dumfries' of its failure to comply with the terms of this Agreement shall not alter the consequences of and penalties associated with the misuse of any 30% Funds by Town of Dumfries as set forth in Paragraph 6B of this Agreement.

10. Town of Dumfries' Obligation to Reimburse Misused Funds to County of Prince William.

A. In the event Town of Dumfries misuses or misallocates any of the 30% Funds, in addition to the consequences set forth in Paragraph 6B, it shall reimburse County of Prince William the full amount of such misused funds plus accrued interest. Until the full amount is reimbursed to County of Prince William, County of Prince William shall withhold further distributions of the 30% Funds to Town of Dumfries.

B. Town of Dumfries' reimbursement of misused funds shall not change the consequences of and penalties associated with such misuse set forth in Paragraph 6B of this Agreement.

11. Maintenance of Records by Town of Dumfries and County of Prince William. Town of Dumfries and County of Prince William shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, Town of Dumfries and County of Prince William shall comply with the Virginia Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this Agreement shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:



Town of Dumfries:  
Town Manager  
Town of Dumfries  
17755 Main Street  
Dumfries, VA 22026

County of Prince William:  
County Executive  
Prince William County  
1 County Complex Court  
Prince William, VA 22192-9201

Town of Dumfries and County of Prince William may change their respective representative designated to receive notices for purposes of this Agreement by providing written notice of such change to the other party.

13. Entire Agreement. This Agreement constitutes the entire agreement between Town of Dumfries and County of Prince William and supersedes any prior understanding or agreement between them with regard to any of County of Prince William's distributions to Town of Dumfries of its *pro rata* portion of County of Prince William's 30% Funds; except that the parties understand and acknowledge that the NVTa/City-County MOA as between NVTa and County of Prince William referenced above has been expressly incorporated.

14. No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of, and bind Town of Dumfries and County of Prince William, but shall not inure to the benefit of any other party or other persons; except as to NVTa, as expressly provided in this Agreement.

15. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this Agreement must be made in writing and signed by Town of Dumfries and County of Prince William.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the date and year aforesaid.

County of Prince William

Attest:

\_\_\_\_\_

Clerk

By: \_\_\_\_\_

Title: \_\_\_\_\_

Town of Dumfries

Attest:

\_\_\_\_\_

Clerk

By: \_\_\_\_\_

Title: \_\_\_\_\_

Northern Virginia Transportation Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY  
AND THE COUNTY OF PRINCE WILLIAM  
REGARDING DISTRIBUTION OF 30% FUNDS**

THIS MEMORANDUM OF AGREEMENT, effective the \_\_\_\_ day of \_\_\_\_\_, 2014 (this "Agreement"), by and between the Northern Virginia Transportation Authority ("NVTa") and the County of Prince William, a member City/County of NVTa (the "CITY/COUNTY").

**WITNESSETH:**

WHEREAS, NVTa was established by the Northern Virginia Transportation Authority Act, VA. Code Ann. §§ 15.2- 4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park ("Localities," collectively and "City/County" individually); and

WHEREAS, in accordance with VA. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which Fund are distributed to NVTa for use in accordance with VA. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTa shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTa that are generated or attributable to the City/County divided by the total of such revenue received by NVTa (the "30% Funds"); and

WHEREAS, among other requirements of VA. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTa in a separate, special fund (the "Local Fund") to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTa's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTa sufficient documentation as required by NVTa showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1B.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTa, as set forth in NVTa's annual budget, shall be allocated among the component counties and cities based on relative population, which administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; and

WHEREAS, Chapter 766 of the 2013 Acts of Assembly, the legislation establishing the Fund, imposes, among others, the following requirements on each of the Localities: (1) that each Locality deposit into its Local Fund, all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTa equivalent to the amount that would have been

received had the maximum tax rate been imposed; (2) that each of the Localities expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the county or city between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and (3) that NVTa and the Localities work cooperatively with towns with a population greater than 3,500 to ensure the towns receive their respective share of the 30% Funds; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its Local Fund the amount equivalent to the revenue generated by the maximum tax rate allowed under § 58.1-3221.3, then NVTa shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's Local Fund and the amount that should have been deposited; and Chapter 766 of the 2013 Acts of Assembly further provides that in the event any of the Localities appropriates or allocates any of the 30% Funds to a non-transportation purpose, the City/County shall not be the direct beneficiary of any of the revenues in the NVTa Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS, NVTa has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each City/County adheres to the statutory and other legal obligations it has with regard to the Fund; and

WHEREAS, NVTa has requested, and the City/County has agreed, to enter into this Agreement for the purpose of ensuring the requirements applicable to NVTa and the City/County regarding the NVTa Fund are met;

NOW, THEREFORE, in consideration of the foregoing, which is hereby incorporated within this Agreement, and the mutual undertakings of the parties, NVTa and the County of Prince William agree as follows:

1. NVTa Management of NVTa Fund. In accordance with § 15.2-4838.01, NVTa shall receive from the Commonwealth's Comptroller regular distributions of the sums deposited in the special nonreverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTa shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTa's investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTa shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its financial records. NVTa shall use the funds solely for transportation purposes benefiting those counties and cities that are embraced by NVTa in accordance with § 15.2-4838.1.

2. Distribution of 30% Funds by NVTa to County of Prince William. Beginning no later than the month following final approval and execution of this Agreement by the parties, NVTa shall begin to distribute to the County of Prince William the 30% Funds to which the County of Prince William is entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTa, and, subject to NVTa's continued receipt of funds from the Comptroller, shall continue to distribute to the County of Prince William its 30% funds on a monthly basis, provided the County of Prince William remains in compliance with the terms of this Memorandum of Agreement and all applicable provisions of law.

3. Payment of County of Prince William's Share of NVTAs Administrative Expenses: Pursuant to § 15.2-4835, the County of Prince William is responsible for paying its share of NVTAs total administrative expenses as set forth in NVTAs approved budget prior to the start of NVTAs fiscal year which begins July 1<sup>st</sup> each year. NVTAs shall invoice the County of Prince William for its proportionate share of NVTAs administrative expenses by June 1<sup>st</sup> of the preceding fiscal year, and the County of Prince William shall, at its election, have the option each year of paying in either of the following methods: (1) by having NVTAs reduce the first distribution of 30% Funds made to the County of Prince William after July 1<sup>st</sup> by the amount of the County of Prince William's share of NVTAs administrative expenses, or (2) by paying NVTAs directly for its share of NVTAs administrative expenses not later than July 15<sup>th</sup>. The failure by the County of Prince William to elect one of the foregoing methods of payment shall result in NVTAs reducing the first distribution of 30% Funds made to the County of Prince William after July 1<sup>st</sup> by the amount of the County of Prince William's share of NVTAs administrative expenses. In the event the County of Prince William fails to pay its share of NVTAs administrative expenses by July 15<sup>th</sup>, NVTAs shall make no distribution to the County of Prince William of the County of Prince William's 30% Funds or of any other monies from the NVTAs Fund.

4. Establishment of Local Fund by County of Prince William.

A. The County of Prince William shall deposit in a Local Fund all revenues distributed to it by NVTAs pursuant to Paragraph 2 above, and all revenues collected by the County of Prince William from the tax imposed pursuant to § 58.1-3221.3. If the County of Prince William has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then the County of Prince William shall deposit into its Local Fund an amount, from sources other than moneys received from NVTAs, that is equivalent to the difference between the revenue the County of Prince William received from the aforesaid tax and the revenue the County of Prince William would have received if it imposed the aforesaid tax at the maximum permissible rate.

B. By August 1<sup>st</sup> of each year, the chief administrative officer of the County of Prince William shall certify to NVTAs, in a form prescribed by NVTAs, that it has satisfied each of the requirements set forth in subsection A.

C. If the County of Prince William has not deposited into its Local Fund an amount equivalent to the revenue the County of Prince William would have received if it imposed the maximum permissible rate under § 58.1-3221.3, then NVTAs shall reduce the 30% Funds distributed to the County of Prince William by the difference between the amount the County of Prince William would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its Local Fund. NVTAs shall retain the amount by which the distribution of County of Prince William's 30% Funds have been reduced for use by NVTAs in accordance with § 15.2-4838.1C.1.

5. Maintenance of Transportation Funding by County of Prince William.

A. The County of Prince William shall expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the County of Prince William, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that the County of Prince William does not expend or disburse the aforesaid amount in any year, the County of Prince William shall not be the direct beneficiary of any of the NVTAs Fund in the immediately succeeding year. In such event, NVTAs shall make no distribution to the County of Prince William of



the County of Prince William's 30% Funds, or any other monies from the NVTa Fund to the County of Prince William, and such funds shall be used in accordance § 15.2-4838.1C.1.

B. By August 1<sup>st</sup> of each year, the chief administrative officer of the County of Prince William shall certify to NVTa, in a form prescribed by NVTa, that it has satisfied the requirements set forth in subsection A for the previous fiscal year.

6. Use of 30% Funds by County of Prince William.

A. The County of Prince William shall use the 30% Funds distributed to it by NVTa for the following purposes as the County of Prince William solely determines: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTa; or (4) for public transportation purposes. The County of Prince William shall not use any of the revenue distributed to it by NVTa to repay debt issued before July 1, 2013.

B. In the event the County of Prince William appropriates or allocates any of the 30% Funds to a purpose other than those specified above, unless demonstrated by the County of Prince William to the satisfaction of NVTa to be attributable to clerical or other unintentional, inadvertent error, then NVTa shall cease any further distributions of the 30% Funds to the County of Prince William in the fiscal year in which the misappropriation or misallocation occurs, and the County of Prince William shall not be the direct beneficiary of any of the NVTa Fund in the fiscal year immediately succeeding the year in which any of the 30% Funds were misappropriated or misallocated and such funds shall be used in accordance § 15.2-4838.1C.1. Further, in that succeeding fiscal year, NVTa shall make no distribution to the County of Prince William of any other monies from the NVTa Fund to the County of Prince William.

7. Distribution to Towns of Proportionate Share.

A. To the extent that one or more towns with a population greater than 3,500 are located within the County, NVTa and the County agree to work cooperatively with the towns for the purpose of implementing the provisions of § 15.2-4838.1 and to ensure that the towns receive their respective share of the 30% Funds distributed to the County by NVTa. Such share shall be determined based on the population of school age children in the town for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax and of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax. The County acknowledges its responsibility to ensure that the towns use the 30% Funds in compliance with this Memorandum of Agreement and the law, and that a town's failure to do so could be treated under law as a failure of the County subject to all the consequences of such failure. The County shall also be responsible for ensuring the town pays its proportionate share of NVTa's administrative expenses as provided for in Paragraph 3.

B. Prior to the time at which the County distributes any of the town's share of the 30% Funds to a town, the County shall enter into an agreement with each of the towns located within the County, in a form approved by NVTa, detailing how the 30% Funds may be used by the town including, but not limited to, the selection of projects by the towns for funding by the County, the circumstances and terms under which the County may distribute any of the 30% Funds to a town, specifically providing

that such distributions to a town shall be on a reimbursement basis only, and the town's obligation to refund to the County with interest any funds used contrary to the agreement or the law. The agreement with the towns shall also provide for (1) NVTa providing its technical and legal resources or act as a non-binding mediator to assist and/or facilitate in the resolution of any questions or disputes upon joint written request by a county and a town; and (2) NVTa instructing a county that it shall make no pro rata distribution of 30% Funds or any other NVTa funds to a town that has appropriated or allocated any of its portion of a county's 30% Funds or any other NVTa funds for unauthorized purposes.

8. County of Prince William's Annual Report to NVTa. Annually, the County of Prince William shall provide to NVTa an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6. The report shall be in a form, and provide the information and documentation, mutually agreed upon by NVTa and the Localities. The County of Prince William shall provide the report to NVTa on or before August 1<sup>st</sup> of each year for the previous fiscal year. In the event the County of Prince William's audited financials show a material variance, defined as five percent (5%) or more, from the initial report, the County of Prince William shall provide NVTa a further report, with supporting documentation satisfactory to NVTa, detailing the County of Prince William's use of the 30% Funds. NVTa may request from the County of Prince William additional information and documentation related to the report and the documentation provided with the report. In the event the County of Prince William fails to provide the report as required above, NVTa shall withhold further distributions of the 30% Funds until the report is provided in accordance with this Paragraph. Once the County of Prince William provides an acceptable report, NVTa shall distribute all withheld funds, inclusive of any interest earned by NVTa on such funds, to the County of Prince William.

9. Failure to Comply with Memorandum of Agreement.

A. In the event NVTa fails to perform any of its obligations under this Memorandum of Agreement, the County of Prince William shall provide written notice to NVTa's Executive Director of such failure. NVTa shall dispute the failure or cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from the County of Prince William. In the event NVTa disputes the failure or fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, the County of Prince William may pursue all remedies available at law to obtain compliance by NVTa.

B. In the event the County of Prince William fails to perform any of its obligations under this Memorandum of Agreement, NVTa's Executive Director shall notify NVTa's Finance Committee which shall review the matter and prepare recommendations for NVTa. Thereafter, NVTa shall determine whether to declare the County of Prince William in default for such noncompliance in which case NVTa shall provide written notice to the County of Prince William of such failure. The County of Prince William shall dispute the noncompliance determination or cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from NVTa. In the event the County of Prince William fails to dispute the noncompliance or to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, NVTa shall withhold further distributions of the 30% Funds to the County of Prince William until the dispute is resolved and County of Prince William is in full compliance with its obligations under this Agreement. In addition, NVTa may pursue all available remedies at law to obtain compliance by the County of Prince William.

C. A cure by the County of Prince William of its failure to comply with the terms of this Agreement shall not change the consequences of mis-use of any of the 30% Funds set forth in Paragraph 6.B of this Agreement.

10. County of Prince William's Obligation to Reimburse Misused Funds to NVTa.

A. In the event the County of Prince William misuses or misallocates any of the 30% Funds in the manner permitted by law, in addition to the consequences set forth in Paragraph 6B, it shall reimburse NVTa the full amount of such misused or misallocated funds inclusive of any interest earned by the County of Prince William on such funds. Until the full amount is reimbursed, NVTa shall withhold further distributions of the 30% Funds to the County of Prince William.

B. The County of Prince William's reimbursement of misused or misallocated funds shall not change the consequences of such misuse or misallocation set forth in Paragraph 6.B of this Agreement.

11. Maintenance of Records by County of Prince William and NVTa. The County of Prince William and NVTa shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, the County of Prince William and NVTa shall comply with the Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this Agreement shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

NVTa:

Executive Director  
Northern Virginia Transportation Authority  
3060 Williams Drive, Suite 510  
Fairfax, VA 22031

County of Prince William:

County Executive  
Prince William County  
1 County Complex Court  
Prince William, VA 22192-9201

NVTa and the County of Prince William may change the representative designated to receive notices for purposes of this Agreement by providing written notice of such change to the other party.

13. Entire Agreement. This Agreement constitutes the entire agreement between NVTa and the County of Prince William and supersedes any prior understanding or agreement between them with regard to NVTa's distribution of the 30% Funds to the County of Prince William.

14. No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of, and bind NVTa and the County of Prince William but shall not inure to the benefit of any other party or other persons.

15. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the

remainder of this Agreement and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this Agreement must be made in writing and signed by NVTA and the County of Prince William.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Agreement as of the date and year aforesaid.

Northern Virginia Transportation Authority

Attest:

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Chairman

County of Prince William

Attest:

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY  
("NVTA"), COUNTY OF PRINCE WILLIAM AND THE TOWN OF  
DUMFRIES REGARDING DISTRIBUTION AND USE OF 30% FUNDS  
UNDER CHAPTER 766 OF THE 2013 VIRGINIA ACTS OF ASSEMBLY**

THIS MEMORANDUM OF AGREEMENT, effective the \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Agreement"), by and between the NVTA, County of Prince William, a member of ("NVTA") and the Town of Dumfries, a Qualifying Town under the NVTA Act and under Enactment Clause 8 of Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766").

**W I T N E S S E T H:**

WHEREAS, NVTA was established by the Northern Virginia Transportation Authority Act, Va. Code Ann. §§ 15.2- 4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park (collectively and individually "City/County"); and

WHEREAS, in accordance with Va. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which fund are distributed to NVTA for use in accordance with Va. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTA that are generated by or attributable to such City/County divided by the total of such revenue received by NVTA (the "30% Funds"); and

WHEREAS, among the other requirements of Va. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTA in a separate, special fund ("The Local Fund") to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTA's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTA sufficient documentation as required by NVTA showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1B.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTA, as set forth in NVTA's annual budget, shall be allocated among the component counties and cities based on relative population which administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; and



WHEREAS, pursuant to Chapter 766, the legislation establishing the Fund, imposes, among other requirements, the following requirements on each City/County: (1) that each City/County deposit into its, Local Fund all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTa equivalent to the amount that would have been received had the maximum tax rate been imposed; and (2) that each City/County expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the City/County between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its Local Fund the amount equivalent to the revenue that would be generated by imposition of the maximum tax rate allowed under § 58.1-3221.3, then NVTa shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's Local Fund and the amount that should have been deposited; and

WHEREAS, Enactment Clause 8 of Chapter 766 provides that NVTa and each City/County embraced by it shall work cooperatively with towns with a population greater than 3,500 located within NVTa's member Counties ("Qualifying Towns") for purposes of implementing Chapter 766 and so as to ensure that all such "Qualifying Towns" receive their respective share(s) of the revenues pursuant to subdivision B 1 of § 15.2-4838.1; and

WHEREAS, Chapter 766 further provides that in the event any County appropriates or allocates any of the 30% Funds to a non-transportation purpose, that County and its Qualifying Towns shall not be the direct beneficiary or beneficiaries of any of the revenues from the NVTa Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS, Chapter 766 further provides that, in the event that any Qualifying Town appropriates or allocates any of the 30% Funds to a non-transportation purpose, not only will such Qualifying Town not be a direct beneficiary of any of the revenues in the fiscal year immediately succeeding the fiscal year in which the 30% revenues were appropriated or allocated to a non-transportation purpose, but its constituent County and all other Qualifying Towns within said County could also be judicially declared not to be direct beneficiaries of such revenues from NVTa in the next succeeding fiscal year; and

WHEREAS, NVTa has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each NVTa member City/County and each Qualifying Town adhere to the statutory and other legal obligations that it has with regard to the Fund; and

WHEREAS, NVTa has requested that each member City/County enter into a separate Memorandum of Agreement in order to implement the provisions of Chapter 766 with regard to *inter alia* the distribution and use of funds in the manner prescribed by Va. Code Ann. §15.2-4838.1 and each member City/County has agreed; and

WHEREAS NVTA and each member City/County has agreed to be bound by all terms and conditions in a separate Memorandum of Agreement (“NVTA/City-County MOA”), for purposes of ensuring that NVTA, each member City/County, and each Qualifying Town are in full compliance with Chapter 766 and all applicable requirements of the NVTA Act with regard to the receipt, maintenance, management, oversight, distribution, and use of all funds from the NVTA Fund; and

NOW, THEREFORE, in consideration of the foregoing which is hereby incorporated within this “Agreement” and the mutual undertakings of the parties, the County of Prince William and the Qualifying Town of Dumfries agree as follows:

1. NVTA’s Management of NVTA Funds. NVTA will manage the NVTA Fund and all funds therein and shall receive from the Commonwealth’s Comptroller regular distributions of the sums deposited in the special non-reverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTA shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTA’s investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTA shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its financial records. NVTA, each component City/County, and each Qualifying Town shall use the funds solely for transportation purposes benefiting those Counties, Cities and Qualifying Towns that are embraced by NVTA in accordance with § 15.2-4838.1.

2. NVTA’s Distributions of 30% Funds to Each NVTA Member City/County, including Qualifying Town Shares. NVTA will make regular distributions of the 30% Funds to each member City/County in accordance with applicable law and in accordance with the processes established by the “NVTA/City-County MOA” incorporated by reference as Attachment 1.

A. Beginning no later than the month following final approval and execution of this Agreement by the parties, NVTA shall begin to distribute to County of Prince William the 30% Funds to which County of Prince William is entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTA; and, subject to NVTA’s continued receipt of funds from the Comptroller, shall continue to distribute to County of Prince William its respective 30% funds on a monthly basis; provided that County of Prince William remains in compliance with the terms of NVTA/City-County MOA and all applicable provisions of law.

B. Upon receipt of its 30% funds as set forth in Paragraph 2A above, County of Prince William will calculate and transfer to the separate account on its financial records that has been established in the name of Town of Dumfries in accordance with Paragraphs 4 and 7A of this Agreement, all amounts attributable to Town of Dumfries using the bases prescribed by Chapter 766 and Paragraph 7A of this Agreement in the manner set forth in Paragraph 4 of this Agreement.

C. County of Prince William will advise Town of Dumfries on a quarterly basis or at such other intervals that are mutually agreeable to County of Prince William and Town of Dumfries as to the balance in Town of Dumfries's special account.

D. For Town of Dumfries's planning and budgeting purposes, prior to the beginning of each fiscal year, County of Prince William will provide to Town of Dumfries a revenue report of receipts for the previous twelve (12) months actual funds—transfers from County of Prince William to Town of Dumfries.

3. County of Prince William and Town of Dumfries's Obligation to Pay Shares of NVTAs Administrative Expenses. Pursuant to §15.2-4835, County of Prince William is responsible for paying its share of NVTAs total administrative expenses as set forth in NVTAs approved budget prior to the start of NVTAs fiscal year which begins July 1<sup>st</sup> of each year. NVTAs shall invoice County of Prince William for its proportionate share of NVTAs administrative expenses by June 1<sup>st</sup> of the preceding fiscal year, and County of Prince William shall, at its election, have the option of paying in either of the following methods: (1) by having NVTAs reduce the final distribution of County of Prince William's 30% funds made to County of Prince William after July 1<sup>st</sup> by the amount of County of Prince William's share of the administrative expenses; or 2) by paying NVTAs directly for its share of the administrative expenses not later than July 15<sup>th</sup>. County of Prince William's failure to elect one of the foregoing methods of payment on or before July 1<sup>st</sup> of the preceding year shall result in NVTAs reducing the first distribution of 30% Funds made to County of Prince William after July 15<sup>th</sup> by the amount of County of Prince William's share of NVTAs administrative expenses. In the event that County of Prince William fails to pay its share of NVTAs administrative expenses by July 15<sup>th</sup>, NVTAs shall withhold further distribution of all County of Prince William's Funds from the NVTAs Fund. NVTAs will reduce County of Prince William's 30% funds by the amount of County of Prince William's delinquent share of NVTAs administrative expenses, remit the balance of County of Prince William's 30% funds to County of Prince William, and restore distribution of all County of Prince William's other NVTAs funding.

A. County of Prince William's payment of its full amount of NVTAs administrative expenses must include the portion of such administrative expenses that are attributable to Town of Dumfries, and County of Prince William will seek reimbursement from Town of Dumfries regarding Town of Dumfries's *pro rata* share of all NVTAs administrative fees that were pre-paid by County of Prince William. Town of Dumfries's share of NVTAs annual administrative expenses shall be calculated by the relative population method as prescribed by Va. Code Ann. § 15.2-4835. Once County of Prince William pays the full amount of its NVTAs administrative expenses in the time and manner required by the NVTAs/City –County MOA, County of Prince William will thereafter send an invoice to Town of Dumfries seeking reimbursement for Town of Dumfries's portions of NVTAs administrative expenses pre-paid by County of Prince William. Town of Dumfries will pay said invoice within thirty (30) days upon receipt. If mutually agreed upon by County of Prince William and Town of Dumfries, Town of Dumfries's reimbursement payments may be made via electronic transfer of funds or as a direct deduction from Town of Dumfries's separate account with County of Prince William; and Town of Dumfries shall have the same options regarding method of payment to County of Prince William as identified in Paragraph 3 above. Failure by Town of Dumfries to pay said invoice will result in County of Prince William withholding Town of Dumfries's 30% Funds until payment is made.

4. Establishment and Maintenance of Separate Accounts by County of Prince William and Town of Dumfries.

A. County of Prince William is required to deposit in its Local Fund all revenues distributed to it by NVTa pursuant to Paragraph 2 above and all revenues collected by County of Prince William from the tax imposed pursuant to § 58.1-3221.3. If County of Prince William has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then County of Prince William is required to deposit into its Local Fund an amount, from sources other than moneys received from NVTa, that is equivalent to the difference between the revenue County of Prince William received from the aforesaid tax and the revenue County of Prince William would have received if it had imposed the aforesaid tax at the maximum permissible rate.

B. County of Prince William agrees to establish, segregate, and maintain on its financial records a separate account in the name of Town of Dumfries for the purpose of calculating and distributing those revenues that are generated by and attributable to Town of Dumfries under Chapter 766. Interest on this account shall accrue at the same rate accrued on all other County of Prince William's special transportation accounts.

C. Town of Dumfries agrees to establish, segregate, and maintain on its financial records a separate account for all NVTa funds that it receives from County of Prince William.

D. Because County of Prince William is required to certify to NVTa by August 1<sup>st</sup> of each year that County of Prince William has satisfied each of the requirements of Paragraphs 4A and 4B above, on or before July 20th of each year, the chief administrative officer of Town of Dumfries shall certify to County of Prince William, in a format prescribed by and acceptable to County of Prince William and NVTa, that Town of Dumfries has satisfied each of the requirements set forth in this Paragraph that may be applicable to Town of Dumfries.

E. If County of Prince William has not deposited into its Local Fund an amount equivalent to the revenue County of Prince William would have received if it imposed the tax at the maximum permissible rate under § 58.1-3221.3, then, in any given year, NVTa shall reduce the 30% Funds distributed to County of Prince William by the difference between the amount the County of Prince William would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its Local Fund; and NVTa shall retain the amount by which the distribution of County of Prince William's 30% Funds will be reduced for use by NVTa in accordance with § 15.2-4838.1C.1. In such situation, Town of Dumfries's percentage of County of Prince William's share of its 30% NVTa revenues shall also be reduced *pro rata*.

5. Maintenance of Transportation Funding by County of Prince William.

A. County of Prince William is required to expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the County of Prince William, excluding bond proceeds or debt service payments and federal or state grants, between



July 1, 2010, and June 30, 2013. In the event that County of Prince William does not expend or disburse the aforesaid amount in any year, County of Prince William shall not be the direct beneficiary of any NVTAFunds in the immediately succeeding year. In such event, NVTAF shall make no distribution to County of Prince William of County of Prince William's 30% Funds, or any other monies from the NVTAFund to County of Prince William or to any of County of Prince William's Qualifying Towns, including Town of Dumfries; and, in such case, all such funds shall be used in accordance with § 15.2-4838.1C.1.

B. Although County of Prince William and Town of Dumfries understand and acknowledge that Town of Dumfries's receipt of annual funding under Chapter 766 is expressly subject to and contingent upon County of Prince William's annual maintenance of transportation funding efforts and requirements as set forth in Paragraph 5A above, Town of Dumfries shall have no independent requirement under Chapter 766 to maintain its own levels of transportation funding from year to year in order to receive its respective share of the 30% funds.

6. Use of 30% Funds by Town of Dumfries.

A. Town of Dumfries shall use its portion of County of Prince William's 30% Funds as distributed to it by County of Prince William solely for the following purposes in a manner determined by Town of Dumfries: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTAF; or (4) for public transportation purposes. Town of Dumfries shall not use any of the revenues distributed to it by NVTAF to repay debt issued before July 1, 2013.

B. In the event that Town of Dumfries appropriates or allocates any of its portion of County of Prince William's 30% Funds to a purpose other than those specified in paragraph 6A above; and unless Town of Dumfries demonstrates to the satisfaction of County of Prince William and NVTAF that such acts were solely a result of and attributable to clerical or other unintentional, inadvertent error, then NVTAF and County of Prince William shall cease any further distributions of the 30% Funds to Town of Dumfries in the fiscal year in which the misappropriation or misallocation occurs Town of Dumfries shall not be the direct beneficiary of any of the funds from the NVTAFund in the fiscal year immediately succeeding the year in which any of its portion of County of Prince William's 30% Funds were misappropriated or misallocated, and such funds shall be used in accordance with §15.2-4838.1C.1. In the next succeeding fiscal year, NVTAF will instruct County of Prince William that there shall be no *pro rata* distribution of County of Prince William's 30% funds to Town of Dumfries; and, if determined by a court of competent jurisdiction, to County of Prince William or any other Qualifying Town located in County of Prince William because Town of Dumfries's default could be deemed a default by County of Prince William and by all other Qualifying Towns located in County of Prince William.

7. County of Prince William's Distributions of Town of Dumfries's Proportionate Share of 30% Funds to Town of Dumfries.



A. Pursuant to Chapter 766, County of Prince William and Town of Dumfries will work cooperatively with NVTa for purposes of implementing the provisions of § 15.2-4838.1 and to ensure that all Qualifying Towns in County of Prince William, including Town of Dumfries, receive their respective share of the 30% Funds distributed by NVTa to County of Prince William. Such share shall be determined on the proportion of population of school age children in Town of Dumfries as compared to County of Prince William for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the tax receipts derived from the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax, and the location of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax.

B. NVTa and County of Prince William have an ongoing responsibility to ensure that all Qualifying Towns in County of Prince William use the 30% Funds in compliance with this Agreement, County of Prince William's NVTa/City-County MOA, and in accordance with law. Town of Dumfries acknowledges that its failure to comply with the terms and conditions of this Agreement shall constitute a default by Town of Dumfries and could constitute a default by County of Prince William and all other Qualifying Towns located in County of Prince William.

C. All distributions of NVTa funds by County of Prince William to Town of Dumfries under this Agreement will be project based and effected by the reimbursement method only. All requests for reimbursements by Town of Dumfries to County of Prince William will be submitted in a form and manner determined by and acceptable to NVTa and County of Prince William. Upon proper submission by Town of Dumfries to County of Prince William; and after review and approval by County of Prince William, County of Prince William shall transmit payment to Town of Dumfries within thirty (30) days from receipt and may be made via electronic transfer of funds, if the two parties so agree. County of Prince William will make every effort to effect reimbursement to Town of Dumfries within twenty (20) days or sooner, as may be practicable

D. Without exception, all projects that Town of Dumfries selects and submits for funding reimbursement to County of Prince William must comply with all requirements and conditions for transportation funding as prescribed under Chapter 766. Further, the County of Prince William determination of Town of Dumfries projects is solely determined through Chapter 766 statutory and technical legal review and criteria.

Upon joint request of County of Prince William and Town of Dumfries, NVTa will provide its technical resources or act as a non-binding mediator as between County of Prince William and Town of Dumfries in order to assist and/or facilitate in the resolution of any question or dispute as to whether a specific Town of Dumfries transportation project may be eligible for funding under this Agreement or under Chapter 766. All such requests for assistance by NVTa should be submitted, in writing, to NVTa, c/o NVTa's Executive Director.

Upon receipt of any such request, NVTa's Executive Director shall advise NVTa regarding the type of assistance requested and will thereafter make NVTa's technical and legal staff available to provide the type of assistance requested by County of Prince William and Town of Dumfries. Nothing herein shall affect any party's rights to

seek or pursue any and all remedies at law that may be available to that party to resolve any disputes.

E.If Town of Dumfries fails to comply with the project selection requirements as prescribed by Chapter 766 or fails to comply with the terms and conditions of this Agreement, it will be obligated to refund with interest to County of Prince William all funds used contrary to this Agreement or in derogation of the law.

8. County of Prince William's Obligation to File Annual Report to NVTa and Town of Dumfries's Obligation to File Annual Report to County of Prince William. County of Prince William must annually provide to NVTa an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6; which Annual Report must include sufficient documentation, showing Town of Dumfries's appropriate use of its portion of County of Prince William's 30% funds during the previous fiscal year. Because County of Prince William is required to provide its Report to NVTa on or before August 1<sup>st</sup> of each year, Town of Dumfries shall provide to County of Prince William on or before July 20<sup>th</sup> of each year an unaudited financial report, using the "cash basis method of accounting" with supporting documentation in a form required by NVTa and County of Prince William showing that all funds distributed by County of Prince William to Town of Dumfries during the previous fiscal year were used as required by Paragraph 6 and in full compliance with the law. In the event the Town of Dumfries's audited financials show a material variance, defined as five percent (5%) or more after adjusted for the difference between cash basis accounting and accrual basis accounting, from the initial report, Town of Dumfries shall provide County of Prince William with supplemental documentation satisfactory to County of Prince William, detailing Town of Dumfries's use of the 30% Funds.

A. In the event the Town of Dumfries fails to provide the report or information as required above, County of Prince William shall withhold further distributions of Town of Dumfries's 30% Funds until the report or supplemental information is provided in accordance with this Paragraph. Once Town of Dumfries provides an acceptable report with appropriate documentation, all withheld funds, inclusive of any interest accrued on such withheld funds, shall be made available for distribution to Town of Dumfries as soon as practicable.

#### 9. Failure to Comply with Memorandum of Agreement.

A. In the event County of Prince William fails to perform any of its obligations under this Agreement, Town of Dumfries shall provide written notice to County of Prince William's County Executive/Manager/Administrator of such failure or non-compliance. County of Prince William shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from Town of Dumfries. Upon its receipt and review of the notice of default from Town of Dumfries, County of Prince William may dispute any matters set forth in such notice; and in such circumstances shall advise Town of Dumfries's Town Manager that any such matter is in dispute. In the event County of Prince William fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, if County of Prince William agrees, Town of Dumfries may request the assistance of NVTa as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County of Prince William or Town of Dumfries from pursuing all legal remedies that may be available to

it at law.

B. In the event Town of Dumfries fails to perform any of its obligations under this Agreement, County of Prince William's Executive/ Manager/Administrator shall notify the Town Manager of Town of Dumfries and notify NVTAs Executive Director that Town of Dumfries is in default. If agreed to by County of Prince William, Town of Dumfries may request the assistance of NVTAs as provided in Paragraph 7D above. Nothing herein shall, however, prohibit either County of Prince William or Town of Dumfries from pursuing all legal remedies that may be available to it at law.

C. A cure by Town of Dumfries's of its failure to comply with the terms of this Agreement shall not alter the consequences of and penalties associated with the misuse of any 30% Funds by Town of Dumfries as set forth in Paragraph 6B of this Agreement.

10. Town of Dumfries's Obligation to Reimburse Misused Funds to County of Prince William.

A. In the event Town of Dumfries misuses or misallocates any of the 30% Funds, in addition to the consequences set forth in Paragraph 6B, it shall reimburse County of Prince William the full amount of such misused funds plus accrued interest. Until the full amount is reimbursed to County of Prince William, County of Prince William shall withhold further distributions of the 30% Funds to Town of Dumfries.

B. Town of Dumfries's reimbursement of misused funds shall not change the consequences of and penalties associated with such misuse set forth in Paragraph 6B of this Agreement.

11. Maintenance of Records by Town of Dumfries and County of Prince William. Town of Dumfries and County of Prince William shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, Town of Dumfries and County of Prince William shall comply with the Virginia Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this Agreement shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

Town of Dumfries:

Town Manager  
Town of Dumfries  
17755 Main Street  
Dumfries, VA 22026

County of Prince William:

County Executive  
County of Prince William  
1 County Complex Court  
Prince William, VA 22192

Town of Dumfries and County of Prince William may change their respective representative designated to receive notices for purposes of this Agreement by providing written notice of such change to the other party.

13. Entire Agreement. This Agreement constitutes the entire agreement between Town of Dumfries and County of Prince William and supersedes any prior understanding or agreement between them with regard to any of County of Prince William's distributions to Town of Dumfries of its *pro rata* portion of County of Prince William's 30% Funds; except that the parties understand and acknowledge that the NVTa/City-County MOA as between NVTa and County of Prince William referenced above has been expressly incorporated.

14. No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of, and bind Town of Dumfries and County of Prince William, but shall not inure to the benefit of any other party or other persons; except as to NVTa, as expressly provided in this Agreement.

15. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this Agreement must be made in writing and signed by Town of Dumfries and County of Prince William.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the date and year aforesaid.

County of Prince William

Attest:

\_\_\_\_\_

Clerk

By: \_\_\_\_\_

Title: \_\_\_\_\_

Town of Dumfries

Attest:

\_\_\_\_\_

Clerk

By: \_\_\_\_\_

Title: \_\_\_\_\_

Northern Virginia Transportation Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_